

Kandel (Migration) [2019] AATA 5496 (25 July 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mrs Dilmaya Kandel Miss Anu Kandel Miss Shobha Kandel
CASE NUMBER:	1828456
HOME AFFAIRS REFERENCE(S):	CLF2013/15276
MEMBER:	Antoinette Younes
DATE:	25 July 2019
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Statement made on 25 July 2019 at 11:34am

CATCHWORDS

MIGRATION – cancellation – Partner (Temporary) (Class UK) visa – Subclass 820 (Spouse) – applicant not spouse of sponsor – lack of evidence relationship genuine and continuing – limited pooling of financial resources, joint liabilities or sharing of expenses – limited evidence of social aspects of relationship and mutual commitment to shared life to exclusion of others – companionship and emotional support – sponsor withdrew application – sponsor and applicant lived together for one year during nine year relationship – vague and incoherent answers – medical condition – decision under review affirmed

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), r.1.15A, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant) applied for the visa on 18 January 2013 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate was not satisfied that the applicant is the spouse of the sponsor as defined in s.5F of the Act.
4. The matter was before the Tribunal on two previous occasions (differently constituted) and was remitted to be determined according to law.
5. The applicants appeared before the Tribunal on 18 June 2019 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Nepali and English languages.
6. The Tribunal also invited the sponsoring partner to attend a hearing listed on 22 July 2019 and he advised the Tribunal that he does not wish to attend the hearing.
7. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

8. The issue in the present case is whether the applicant and the sponsor are in spousal relationship as defined in s.5F of the Act.

Whether the parties are in a spouse or de facto relationship

9. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
10. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is

extracted in the attachment to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

11. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship.

12. By way of background, the applicant is the mother of the secondary applicants, Anu Kandel (DOB 12/2/1991) and Shobha Kandel (DOB 16/1/1994). The applicant came to Australia on 17 August 2010 for three months as a visitor, departing on 11 November 2010. She was a widow at the time, her first husband having passed away in 2008. The sponsor is an Australian citizen who was born in Hong Kong. The sponsor and the applicant met through the applicant's brother and they married but after the marriage, the applicant left to Nepal on 9 November 2010 and later returned to Australia in November 2012.

13. The couple married on 5 November 2010, as evidenced by the marriage certificate. The Tribunal finds that the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

Are the other requirements for a spouse relationship met?

14. This matter has had a long history with a refusal at the primary level which was affirmed essentially on the same basis on two previous occasions by the Tribunal.

15. The Tribunal has carefully considered and given regard to all relevant material. Although in some ways, there is support for the applicant's contention that she is in a spousal relationship with the sponsor, in other significant ways and a fair assessment of the evidence, the Tribunal is satisfied that the applicant's contention is not supported. For the reasons discussed below, the Tribunal is not satisfied that the relationship can be characterised as a spousal relationship as defined at law.

16. Material provided in support of the claim that the relationship is genuine and continuing

17. During the primary and review stages, following relevant documents were provided:

- Marriage certificate of the couple dated 5 November 2010.
- Certificate of Registration in the sponsor's name at his address in Surry Hills, expiry date 31 May 2011. Certificate of registration, expiry date of 20 October 2016 in the name of the applicant at a Redfern. Used car tax invoice dated 18 January 2016.
- Australian Business Register retrieved on 31 May 2011 in relation to the sponsor - trading name of CAN DO OZL with the entity name of the sponsor.
- Electricity account dated 20 April 2011 addressed to the occupant of the premises in Surry Hills.
- Telstra account for the billing period until 27 April 2011 addressed to both the sponsor and the applicant at the Surry Hills premises. Telstra account for billing period to 27 November 2010 to the sponsor at the Surry Hills address.
- TPG account raised on 19 September 2014 referring to the applicant and the sponsor at the address in Redfern.

- Westpac letters dated 5 November 2010, 22 November 2010, and 7 November 2014 referring to an account in the names of the applicant and the sponsor. Various statements of transactions for periods in 2013, 2014 and 2016.
- Medical evidence in relation to the sponsor.
- Copies of photographs of the couple at various locations, some of which with the applicant's daughters.
- Documents relating to the applicant's former husband's death.
- Centrelink documents relating to the sponsor.
- General tenancy agreement and bond details naming the sponsor and the applicant as joint tenants of a property in Redfern, signed on 29 March 2016.
- Statutory Declarations and statements of the applicant and the sponsor. Affidavits from relatives dated 2016. Statement from a friend.
- Reference for the applicant from Bill Zreika commenting on her qualities as an employee.
- Wills of both the applicant and the sponsor naming each other as executors and beneficiaries.
- Postcards and chats' records.
- Academic documents relating to the secondary applicants.

18. **ORAL EVIDENCE**

19. In the course of the hearing, the applicant gave evidence that the sponsor is her brother's friend and he also worked with her brother in the same college. The Tribunal expressed concerns about the couple getting married 15-16 days after they met. She said the sponsor is her brother's friend and they worked together. She said everyone knew that the sponsor was a "*good boy*". She stated that her brother has been in Australia for about 20 years and the sponsor was working with her brother.

20. The applicant gave evidence that she returned to Nepal five days after they got married and that she applied for the partner visa when she was in Nepal but later the application was withdrawn. She stated that she was involved in consultancy/student agent for overseas students organising applications for potential students, including visa applicants to Australia. She stated she had a problem in the UK where students' fees were blocked so she was trying to sort things out but the sponsor was *furious* and withdrew the sponsorship.

21. The Tribunal referred to the withdrawal of the application and suggested to the applicant that this raises some doubts about the genuineness of the relationship between the couple and the applicant stated "*that's true*". The applicant acknowledged that the fact that the sponsor withdrew the application could suggest that he did not consider himself to be in a genuine and continuing relationship. The applicant stated that this is "*obvious*". She said that she initially thought she would go to London for good but when she returned to Nepal, she and the sponsor reconnected. She and her daughters returned to Australia in 2012. In terms of contact during that period until her return to Australia, she stated that they chatted.

22. The applicant gave evidence that on her return to Australia in 2012, she lived with her brother at a *Redfern* address for approximately seven months. The Tribunal asked the

applicant why she and the sponsor did not live together if they were in a genuine and continuing relationship. She stated that the sponsor at the time was living in a one-bedroom unit in Surry Hills and that the sponsor was working in the college where they saw each other. She stated that the sponsor used to visit her as well.

23. In relation to subsequent living arrangements, the applicant gave evidence that she and the sponsor moved in together in Surry Hills but her daughters stayed at her brother's address. The Tribunal asked her where they were living together and the applicant did not respond. The Tribunal noted that the application was re-lodged in January 2013 and asked her where they were living at that time. She indicated that she was still living with her brother but later moved in with the sponsor around May 2013. The Tribunal asked her about the sponsor's residential address at the time of lodging the application and the applicant gave an address but later stated that she was not sure. The Tribunal asked the applicant why she did not know the specific details of the address where the sponsor lived and she stated that it has been a long time and that they stayed in two places. She stated that they were going back and forth between two places. She stated that they lived together for about 18 months. The Tribunal expressed concerns about the applicant's apparent inability to provide clear and coherent details about basic matters such as the address where she and the sponsor had lived, particularly in the context of her evidence that they lived at that address for approximately 18 months. She said they shared places when they were waiting for the visa.

24. The Tribunal asked the applicant about the current address of the sponsor and she stated that at times he lives in Artarmon but sometimes in Parramatta. That is, they do not live together. She explained to the Tribunal that the sponsor lives with his mother in Artarmon which is close to rehabilitation services which he requires. She stated that she and her daughters live in Parramatta and that he visits them at their home fortnightly.

25. The Tribunal asked the applicant if since her return to Australia in 2012 until now, she and the sponsor had lived together under the same roof and she stated that they did for one year in Lawson Street, Redfern but she did not the exact details. The Tribunal expressed concerns at the lack of details about the address.

26. The applicant gave evidence that the sponsor lives in Artarmon and that the sponsor's family do not *like* her. She said he advised her "*not to do anything...not to visit the house*". She said he does not want her to consult with family matters or to visit him at the house where he lives with his mother who owns the property.

27. In relation to finances, the applicant gave evidence that she currently works part-time and that the sponsor is in receipt of the Disability Pension. She stated that her daughters work; Anu works part-time in a management role and also undertakes legal studies. Shobha works and studies as well. She stated that she and her daughters live in the unit in Parramatta sharing expenses, including tuition fees. She said the sponsor does not work.

28. The Tribunal asked the applicant if the sponsor had disclosed the marriage to Centrelink and the applicant stated that at the beginning, the sponsor did not disclose the marriage but he has now attended to the matter. The Tribunal gave a warning and indicated that the information before the Tribunal suggests inconsistent scenarios; for immigration purposes, the couple claimed to be married and in a genuine and continuing relationship, inconsistent with information provided to Centrelink. She said last year this issue was raised and the sponsor has fixed it. The Tribunal asked for evidence in support that the sponsor had "*fixed*" it.

29. The Tribunal referred to documents provided by the applicant in matter number 1508487. The Tribunal discussed the document dated 23 May 2016 being an *Income Statement* from Centrelink in relation to the sponsor showing that he is not "*Partnered*". The

Tribunal indicated to the applicant that this suggests that as at May 2016, the sponsor had not declared his marriage to Centrelink which is inconsistent with the couple's claims that they are in a genuine and continuing relationship. The applicant stated that since the issue was raised in 2016, she asked the sponsor to get the *document*. The Tribunal showed the applicant the relevant document indicating that the sponsor was not partnered. She stated that she was aware of this issue which she mentioned to the representative who mentioned that it had been "*fixed*". She said that the sponsor said he would fix it but she has not followed up on the issue. The Tribunal indicated that it considered the provision of potentially incorrect information to Centrelink to be serious and could warrant referral by the Tribunal for investigation. The Tribunal indicated that the inconsistent scenarios raise doubts about whether the relationship is genuine and continuing relationship.

30. The Tribunal expressed concerns about the fact that the sponsor has not attended the hearing, raising some doubts about his commitment to the relationship. The applicant referred to the hearing invitation being sent to the applicant. The Tribunal explained that as she is represented, it is up to her advisor to prepare her case in her best interest. She said they were trying to confirm if he is required to attend and they were told he was not required. The applicant referred to a telephone call to the Tribunal. In any event, given the potential seriousness of this issue and the fact that the sponsor had not attended the hearing, the Tribunal indicated that it would invite the sponsor to attend another hearing so that this issue can be discussed fully with him. The Tribunal further indicated that the Tribunal would draw adverse inferences if the sponsor chooses not to attend any subsequent hearing, in relation to Centrelink and not attending the hearing. She said the sponsor is willing to attend the hearing.

31. The applicant confirmed that the joint account was closed in 2017. She confirmed that they no longer have a joint account and that the car is their only joint asset.

32. The Tribunal discussed with the applicant the letter provided to the Tribunal dated 7 June 2019 from the Director of a One Agency Realty noting that the applicants and the sponsor live at the same address in Parramatta, which does not appear to be correct as the sponsor does not live there. She said he does sometimes. The Tribunal also discussed a document in relation to Anu dated 27 February 2019 showing a Redfern address not the Parramatta one. The applicant said the Redfern address is still used for emergency as a house is more secure than units.

33. The Tribunal discussed the TPG document dated 30 April 2019 and asked for an explanation about the inclusion of the sponsor's name at the Parramatta address, given that he lives at Artarmon. She stated that as they did not have any documents under his name, they decided to show his name in that document.

34. The secondary applicants gave evidence about their studies and work. Shoba gave evidence that she works and that payment of the rent is shared. She stated that if needed, she is assisted in paying her tuition fees. She said it is difficult for the sponsor (she referred to him as her dad) to travel. She said when she goes to see the sponsor in Artarmon, she does not go inside the home. She said the unit in Parramatta has three rooms and one of the rooms is used for boarders who pay. She did not know if the sponsor stayed overnight. Anu gave evidence that she works part-time and that sometimes she sees the sponsor.

35. The Tribunal indicated to the applicant that despite the claim that the relationship has been ongoing for many years, there is limited and current corroborative evidence to support that claim.

36. **Hearing listed on 22 July 2019**

37. The Tribunal listed the matter for hearing on 22 July 2019 specifically to provide the sponsor with an opportunity to give evidence. The sponsor declined the invitation and provided a statement as follows:

i) He withdrew the application lodged in 2010 due to a misunderstanding. His wife left Nepal to the UK in a hurry. He wanted to go as well but that did not happen. He did not understand what was going on and thought it was over and withdrew the application believing the applicant had gone. He later regretted his actions and the relationship continued.

ii) At the time of the marriage, he was living in housing commission accommodation in Surry Hills. This was a one-bedroom apartment and the applicant lived there on and off in 2010, returning to her children. The unit was too small and the children stayed at the uncle's place in Redfern a few doors down. He tried to obtain a larger housing commission accommodation but the application remained pending due to the accident he suffered. He and the applicant rented a place in Lawson Street Redfern which was a first floor apartment which turned out to be unsuitable.

iii) The Artarmon property is a rented accommodation near his retired parents. It is convenient for him to live near his parents who provide assistance when needed. The Parramatta address is where the applicant lives. He goes there sometimes as well. He has not made up his mind to move there because he has to consider many issues, such as rehabilitation and counselling at Artarmon. He is also studying at Gore Hill TAFE. They plan to buy a house and live together once the visa issue is finalised. The applicant has a property in Nepal which would be sold so they can buy a property in Australia.

iv) Regardless of the accommodation arrangements, they are in a genuine and continuing relationship. They wish to spend the rest of their lives together. She has been a fantastic wife. He has never had children before and they are a family that has given him a sense of belonging. Both daughters are like his own.

v) When he got married in 2010, he updated Centrelink but this was changed to the single status when he withdrew the application. At that time, it would have been correct to indicate his status as *"separated"* but *"they put me as single and I don't know why"*. The register has not been updated since then. He is thankful to the government for the help and support he has received. He is in the *"process of updating it which will happen soon"*.

vi) He has declined the hearing to save time and he has put down all the relevant information in the statement.

38. In a Statutory Declaration sworn on 19 July 2019, the applicant provided further background information about the relationship and stated:

a) She was working in Kathmandu as a student consultant for overseas students. She was sending students to the UK, Canada, and Australia. After lodging the partner visa application, one of the UK colleges closed down and hundreds of students were displaced so she had to go to the UK urgently for a few days. She communicated this to the sponsor who wanted to go there as well but he did not have time. She believes that the sponsor did not *"understand properly"* and thought she was gone for good so he withdrew the application. He later felt sorry for his actions and the relationship continued.

b) The sponsor has provided explanations about the different addresses. The sponsor had lived in housing commission property and her brother was living nearby and they were basically using both addresses. The sponsor did not want to give up the housing commission property until the visa issue is resolved because he was feeling financially insecure.

c) During the processing of the application, the sponsor suffered an accident and he is in a wheelchair. She did not give up after the death of her former husband because the sponsor assured her children stable parenthood.

d) The sponsor lives in the Artarmon address because it is close to his parents and eventually they will leave together permanently. Her children are very supportive and are attached to the sponsor. The relationship is genuine and continuing.

39. FINDINGS & REASONS

40. Financial aspects of the relationship – including joint ownership of assets; joint liabilities; extent of pooling of financial resources; any legal obligations owed to the other party; any sharing of day-to-day household expenses.

41. The evidence before the Tribunal and the Tribunal accepts that the sponsor and the applicant have had limited pooling of financial resources. They have had a joint bank account and the applicant confirmed in the course of the hearing that the joint account was closed in 2017. Currently they do not have any joint accounts. The applicant gave evidence and the Tribunal accepts that they have a car as a joint asset. They have wills nominating one another as executors and beneficiaries.

42. The sponsor is in receipt of Centrelink benefits and the applicant works and lives with her two daughters in premises in Parramatta. The sponsor lives in Artarmon and occasionally visits the applicant and her daughters in Parramatta. They also visit him in Artarmon.

43. The Tribunal has given regard to the sponsor's comments that they plan to buy a home once the visa issue is resolved. The Tribunal acknowledges that the sponsor has mobility issues and the Tribunal appreciates his need to be close to medical and other services. The sponsor advised that being close to his retired parents in Artarmon is a consideration because *"of the help they can provide when no one is around"*¹.

44. Considered objectively and given that they have been married for approximately nine years, the Tribunal is satisfied that on balance, there is limited pooling of financial resources, joint liabilities or sharing of day-to-day household expenses. The Tribunal is satisfied that the financial aspects of the relationship do not support a finding that this is a spousal relationship as defined.

45. On the evidence, the Tribunal is not satisfied that the applicant and the sponsor have pooled their financial resources in any significant way, or that they have any significant joint assets or liabilities, or that they have made any significant joint purchases, or that they share daily financial responsibilities.

46. Nature of the household – including any joint responsibility for care and support of children; parties' living arrangements; and any sharing of housework.

¹Statement of sponsor, at page 2 –Folio 112 of AAT file 1828456.

47. The applicant gave extensive evidence about their living arrangement. The Tribunal has a number of concerns about the applicant. In the course of the hearing, she had difficulties responding to questions concerning basic details such as addresses. She had difficulties in providing coherent responses about when and where they lived. The evidence before the Tribunal indicates that the applicant and the sponsor have used and lived in different addresses over the years of their claimed relationship. The sponsor has had public housing accommodation where he lived on his own. The sponsor currently lives in Artarmon. Whereas, the applicant and her two adult daughters live together in Parramatta, although they visit each other.

48. The applicant gave evidence that she and the sponsor had lived together for about a year since they married on 5 November 2010. The Tribunal found the applicant's evidence in relation to addresses to be incoherent and confused, raising some doubts about the couple cohabiting. However, the Tribunal accepts this as being plausible. The evidence before the Tribunal indicates that for many years, the couple lived at different addresses. They provided a number of explanations such as the sponsor's medical condition to which the Tribunal has given weight, the size of the unit in which the sponsor had lived and its proximity to the applicant's brother's home. The Tribunal has given regard to the statements and concerns of the sponsor not wanting to jeopardise his housing commission accommodation and his reasons for wanting to remain in Artarmon currently. Individually those explanations could be persuasive, however, the cumulative evidence indicates that they have lived apart for many years, raising serious doubts about the claim that this is a genuine and continuing relationship.

49. The Tribunal accepts the evidence that the applicant and her daughters have at times provided a level of assistance and care to the sponsor who has mobility challenges and the Tribunal has given this aspect favourable weight.

50. In consideration of the evidence as a whole, the Tribunal is not satisfied that the nature of the household supports a finding that the relationship is genuine and continuing. On the evidence, the Tribunal is not satisfied that the applicant and the sponsor are in a spousal relationship and that they have established that they are living together as spouses or are not living apart on a permanent basis.

51. On the evidence the Tribunal is not satisfied that the sponsor and the applicant have established a joint household or that they share the responsibilities of a household.

52. Social aspects of the relationship – including whether parties represent themselves to other people as being married to each other; the opinion of friends and acquaintances about the nature of the relationship; and any basis on which the persons plan and undertake joint social activities.

53. The applicant and the sponsor have claimed that they met through the applicant's brother and this is corroborated by a statement by the applicant's brother. The applicant gave evidence that the sponsor's family do not *like* her and that the sponsor advised her "*not to do anything...not to visit the house*". She said he does not want her to consult with family matters or to visit him at the house where he lives with his mother who owns the property. She previously gave evidence² that the sponsor's family do not accept her because they are Chinese and she is from Nepal.

54. There are before the Tribunal photographs showing that the sponsor and the applicant have spent time together including time spent with the applicant's daughters. The Tribunal notes that in the course of the hearing, the daughters spoke positively of the sponsor and the Tribunal has taken this into consideration. The Tribunal acknowledges that

²As noted in paragraph 22 of Case number 1508487

Shoba referred to the sponsor as her dad demonstrating a level of affection and her perception about his role. The Tribunal has given this aspect favourable weight.

55. There are supporting statements dated 2016 from family members and others referring to the genuineness of the relationship. The Tribunal has given that material weight. However, on balance the Tribunal considers that there is limited evidence about the social aspects of the relationship to support the claim that it is genuine and continuing. On the evidence, the Tribunal is not satisfied that the applicant and the sponsor represent themselves as being in a committed spousal relationship.

56. Nature of persons' commitment to each other – including duration of the relationship; the length of time they have lived together; degree of companionship and emotional support they draw from each other; and whether they see the relationship as long-term.

57. The Tribunal finds it difficult to accept that that the couple married soon after they met. The Tribunal is not persuaded by the applicant's explanations that the sponsor is her brother's friend and had worked together or that the sponsor was a "*good boy*". The Tribunal has difficulties accepting that in a genuine and continuing relationship, the applicant would return to Nepal five days after she married. Although the applicant provided explanations, she agreed that the fact that the sponsor withdrew the application raised some doubts about the genuineness of the relationship.

58. The Tribunal is not persuaded or convinced by her explanations that because she had to go to the UK to deal with students' matters, the sponsor was *furious* and withdrew the application. The Tribunal is not persuaded by the sponsor's explanations that he did not understand what was going on. The Tribunal is satisfied on the evidence that the withdrawal of the sponsorship reflects adversely and is strong evidence that the relationship is not genuine and continuing, even at the outset.

59. The applicant and the sponsor were living in two different countries for approximately two years after they married. The Tribunal accepts as plausible that they remained in contact, but even after her return to Australia, the couple did not live together on a permanent basis. For a substantial period, they lived in different premises. The Tribunal has given regard to their explanations but considered objectively and looking at the evidence cumulatively, the Tribunal is not satisfied that they provide each other with companionship, emotional and other support, or that they see their relationship as being long-term. In reaching those conclusions, the Tribunal has given regard to the evidence that there is a level of support provided by the applicant to the sponsor who has challenges, however, the Tribunal is not satisfied that such a support is strong evidence of a spousal relationship as defined.

60. In the course of the hearing, the Tribunal referred to the fact that the sponsor did not attend the hearing, raising some doubts about his commitment. The Tribunal adjourned the hearing specifically to give the sponsor an opportunity to give evidence. Instead, he provided a written statement. The Tribunal appreciates that the sponsor has mobility difficulties and the Tribunal has taken this aspect into account. However, the Tribunal is of the view that given the significance of the hearing and particularly in circumstances where the matter has been remitted to the Tribunal on two previous occasions, that the sponsor would want to attend the hearing to put the case in full before the Tribunal. The fact that the sponsor did not attend the hearing raises significant doubts about his commitment to the relationship.

61. The Tribunal accepts the applicant's oral evidence that the sponsor and the applicant lived together for approximately one year out of their nine-year of claimed relationship, but this is a limited period raising real doubts about the genuineness of the relationship. The

Tribunal appreciates that genuine relationships come in various forms and there is no standard approach by which relationships can be assessed but the applicant claims that she has been in a genuine and continuing relationship with the sponsor for many years, since 2010 when they met. Although, there is some evidence to support those claims, on balance, the Tribunal is not satisfied that the applicant and the sponsor have been in a genuine and continuing relationship.

62. The Tribunal is satisfied on the evidence that although they are married, the totality of the evidence does not support a finding that this is a spousal relationship as defined.

63. Any other circumstances of the relationship – Centrelink issue

64. As discussed in the course of the hearing, a document relating to the sponsor provided by the applicant dated 23 May 2016, *Income Statement* from Centrelink shows that the sponsor is not “*Partnered*”, inconsistent with the claim of being married and raising doubts about whether the relationship is genuine and continuing. They have provided explanations and indicated that this issue has been resolved. They however have not provided any up-to-date information to confirm the correct status as far as Centrelink is concerned. The sponsor indicated that he is in the process of updating Centrelink “soon”.

65. The Tribunal is of the view that the provision of incorrect information to the Australian authorities, whether it is Centrelink, immigration or any other authority to be serious and could attract significant penalties. The Tribunal takes its role and the Australian legal system to be serious and although it is not the Tribunal’s role to make findings of breaches of law relating to Centrelink, the Tribunal and if warranted, can refer matters to other agencies for their consideration.

66. Given the Tribunal’s findings that the relationship is not genuine and continuing, the Tribunal is satisfied that the *Income Statement* from Centrelink is consistent with those findings. In those circumstances, the Tribunal has given significant weight to the Income Statement as being credible and strong evidence that this relationship is not a spousal as defined at law. Consequently, the Tribunal does not consider it appropriate or necessary to take any further action in relation to the Centrelink issue.

67. Cumulative consideration

68. The Tribunal has considered all aspects of the relationship, independently and as a whole. The Tribunal is satisfied that the cumulative evidence before the Tribunal suggests that although the sponsor and the applicant have known each other for a number of years, their relationship could not be characterised as a spousal relationship, as defined. The Tribunal is satisfied that having regard to all the circumstances and on balance of the evidence, the sponsor and the applicant do not have a mutual commitment to a shared life as husband and wife to the exclusion of others, or that the relationship is genuine and continuing, or that the couple live together and not separately and apart on a permanent basis.

69. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F are met at the time the visa application was made or the time of this decision. Therefore the applicant does not meet cl.820.211 and/or cl.820.221.

70. In relation to the secondary applicants and in light of the Tribunal’s findings that the applicant does not satisfy relevant criteria, the secondary applicants do not meet cl.820.311 because they are not members of the family unit of, and made a combined application with, a person who satisfies the primary criteria. In those circumstances, the Tribunal does not

need to assess whether the secondary applicants would meet the definition of members of the family unit of the applicant.

71. For the reasons above, the applicants do not satisfy the criteria for the grant of the visas.

DECISION

72. The Tribunal affirms the decisions not to grant the applicants Partner (Temporary) (Class UK) visas.

Antoinette Younes
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

(1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or
- (b) a Partner (Provisional) (Class UF) visa; or
- (c) a Partner (Residence) (Class BS) visa; or
- (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

- (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
- (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
- (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
- (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.

(4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).

